

8473 A

RECEIVED **HERCULES INCORPORATED**

WILMINGTON, DELAWARE 19899 • TELEPHONE 302 575-5000

SEP 15 2 03 PM '76

SEP 15 1976 - 2 10 PM

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I.C.C.

FEE OPERATION BR

SEP 14, 1976

RECORDATION NO. 8473

SEP 15 1976

SEP 15 1976 - 2 10 PM

CC Washington, D. C

Interstate Commerce Commission  
Washington, D.C.

Gentlemen:

Enclosed for recordation under the provisions of Section 20(c) of the Interstate Commerce Act, as amended, are the original and 10 counterparts of each of the following:

- RECORDATION NO. 8473
- SEP 15 1976 - 2 10 PM
- (1) A Lease of Railroad Equipment, dated as of September 1, 1976 (hereinafter "Lease").
  - (2) A Security Agreement, dated as of September 1, 1976 (hereinafter "Security Agreement").
  - (3) An Assignment of Lease and Agreement, dated as of September 1, 1976 (hereinafter "Assignment").
  - (4) Lessee's Consent and Agreement (hereinafter "Consent").

The general description of the railroad rolling stock covered by the enclosed documents is set forth in Schedule A to the Lease, a copy of such schedule is attached hereto and made a part hereof.

The names and addresses of the parties are:

Owner under the Lease, the Security Agreement, the Assignment and the Consent:	New England Merchants Leasing Corporation B-3 P.O. Box 2332 Boston, Massachusetts 02107
Note Purchaser under the Lease, the Assignment and the Consent and the Secured Party under the Security Agreement:	The Philadelphia Savings Fund Society 1212 Market Street Philadelphia, Pennsylvania 19107 Attn: Securities Investment Department

*C. County of...*  
*Copy for...*

Lessee under the Lease,  
the Security Agreement,  
the Assignment and the  
Consent:

Hercules Incorporated  
910 Market Street  
Wilmington, Delaware 19899

The undersigned is the Lessee referred to above and has knowledge of the matters set forth in the enclosed documents. Therefore, should you have any questions concerning these documents, please contact Israel J. Floyd, Esq., at area code 302, telephone number 575-7034.

Please return the original and 8 copies of the Lease, Security Agreement, the Assignment and the Consent to the bearer of this letter for delivery to Israel J. Floyd, Esq., Hercules Incorporated, 910 Market Street, Wilmington, Delaware 19899.

Enclosed is a check in the amount of fifty dollars (\$50.00) to cover the required recording fee.

Very truly yours,

HERCULES INCORPORATED

BY: 

Gerard P. Kavanaugh  
Associate General Counsel

SCHEDULE A

to Lease

EQUIPMENT DESCRIPTION

Type

100 ton, 5,250 cubic foot capacity Covered Hopper Rail Cars  
A.A.R. Car Type -- L 254

A.A.R. Mechanical Designation

LO

Quantity

200

Lessee's Identifying Numbers

HPCX 59000-59199 (both inclusive)

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

9/15/76

**OFFICE OF THE SECRETARY**

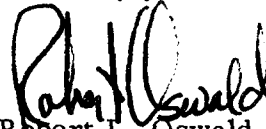
Israel J. Floyd, Esq.  
Hercules Incorp.  
910 Market St.  
Wilmington, Delaware 19899

Dear

The enclosed document(s) was recorded pursuant to the  
provisions of Section 20(c) of the Interstate Commerce Act,  
9/15/76 2:10pm  
49 U.S.C. 20(c), on at ,

and assigned recordation number(s)  
8479  
8479-A  
8479-B  
8479-C

Sincerely yours,

  
Robert L. Oswald  
Secretary

Enclosure(s)

SE-30  
(5/76)

RECORDATION NO. 6473 Filed 3 Recorded

SEP 15 1976 -2 10 PM

INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT dated as of September 1, 1976, between HERCULES INCORPORATED, a Delaware corporation (hereinafter called the "Lessee"), and NEW ENGLAND MERCHANTS LEASING CORPORATION B-3, a Massachusetts corporation, (hereinafter called the "Owner").

WHEREAS, the Owner and the Lessee have entered into a finance agreement dated as of the date hereof (hereinafter called the "Finance Agreement"), to which The Philadelphia Saving Fund Society (hereinafter called the "Note Purchaser"), is also a party to provide for the financing of the purchase by the Owner of the units (hereinafter called together the "Units" or individually the "Unit") of railroad equipment described in Schedule A hereto (hereinafter called the "Equipment") selected and ordered by the Lessee pursuant to a purchase order assignment (said purchase order assignment, as consented and agreed to by the Builder referred to below, is hereinafter called the "Purchase Order Assignment") whereby the Lessee has assigned its interest in the purchase order dated September 1 (hereinafter called the "Purchase Order") between the Lessee and ACF Industries Incorporated (hereinafter called the "Builder"); and

WHEREAS, the Note to be purchased by the Note Purchaser is to be secured by an assignment of this Lease by the Owner pursuant to an Assignment of Lease and Agreement (hereinafter called the "Assignment of Lease"), to which the Lessee will consent pursuant to a Lessee's Consent and Agreement (hereinafter called the "Consent") and by a first security interest in the equipment pursuant to a security agreement dated as of the date hereof (hereinafter called the "Security Agreement"); and

WHEREAS, the Lessee desires to lease all of the Units of the Equipment, or such lesser number (hereinafter called the "Units") as are delivered and accepted for under the Finance Agreement at the rentals and for the terms and upon the conditions hereinafter provided;

NOW THEREFORE, in consideration of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Owner hereby leases the Units to the Lessee upon the following terms and conditions:

Section 1. Net Lease. This Lease is a net lease. Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein provided, the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Owner, the Note Purchaser or the Builder, under this Lease, the Assignment of Lease, the Finance Agreement, or the Security Agreement, or under any document or transaction, or for any other cause whatsoever; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Owner or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to an express provision of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder in accordance with the terms hereof shall be final and the Lessee shall not seek to recover all or any part of such payment from the Owner or the Note Purchaser for any reason whatsoever; provided, however, that this sentence shall not be construed so as to impair any rights which the Lessee may have against the Owner by reason of any default by the Owner in any of its obligations under this Lease.

Section 2. Delivery and Acceptance of Units. The Owner hereby appoints the Lessee its agent for inspection

and acceptance of the Units pursuant to the Finance Agreement. Each delivery of a Unit to the Owner under the Finance Agreement shall be deemed to be a delivery hereunder to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Owner under the Finance Agreement. Upon or prior to such delivery, the Lessee will cause an employee or agent of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit on the Closing Date (as defined in Section 3 of the Finance Agreement) with respect to such Unit on behalf of the Owner and execute and deliver to the Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such Unit has been inspected and accepted on behalf of the Lessee and the Owner on such Closing Date and is marked in accordance with Section 5 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

Section 3. Rentals. The Lessee agrees to pay to the Owner as rental for each Unit subject to this Lease, one payment on the last Closing Date and thereafter 80 consecutive quarterly payments, payable on each quarterly anniversary of the last Closing Date under the Finance Agreement (the "Rental Payment Date"), in each year commencing on the first such quarterly anniversary date of such last Closing Date. The rental payment payable on such last Closing Date shall be in an amount equal to .025% of the Purchase Price (as defined in Section 3 of the Finance Agreement) of each Unit theretofore delivered and accepted pursuant to Section 2 of this Lease for each day elapsed from the respective Closing Date on which such Unit was accepted by the Lessee and became subject to this Lease to such last Closing Date (computed on the basis of a 360-day year of twelve 30-day months). The remaining 80 quarterly rental payments shall each be in an amount equal to 2.26036% of the Purchase Price of each Unit subject to this Lease on the date of such payments.

If any quarterly rental payment date referred to above is not a business day, the quarterly rental payment otherwise payable on such date shall then be payable on the next succeeding business day, and no interest shall be payable for the period from and after the nominal date for payment thereof to such next succeeding business day.

The Lessee agrees to make each payment provided for herein as contemplated by this rental section in immediately available funds as soon as practicable in the city where such payment is to be made.

Section 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of Section 7, 10, 13 and 19 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to Section 3 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under Section 6, 7, 9 and 14 hereof) shall survive the expiration of the term of this Lease.

It is understood and agreed that, so long as Lessee shall not be in default hereunder, the right, title and interest of the Note Purchaser is, by the express terms of the Security Agreement, subject to the rights and interests hereunder of the Lessee in and to the Equipment.

Section 5. Identification Marks. The Lessee will at its own expense cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the name of Owner followed by the words, "Owner-Subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c", with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Owner's title to and property in such Unit and the rights of the Owner under this Lease and of the Note Purchaser under the Security Agreement. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace promptly any such name and words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Note Purchaser and the Owner and filed, recorded and deposited by

the Lessee in all public offices where this Lease and the Security Agreement shall be filed, recorded and deposited in accordance with applicable law and (ii) the Lessee shall have furnished the Note Purchaser and the Owner an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Note Purchaser's and the Owner's interests in such Units and no filing, recording, deposit or giving of notice with or to any other federal, state or local government or agency thereof is necessary to protect the interests of the Note Purchaser and the Owner in such Units.

The Units may be lettered with the names or initials of other insignia customarily used by the Lessee or its affiliates. Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

Section 6. Taxes. Whether or not any of the transactions contemplated hereby are consummated, the Lessee agrees to pay, and to indemnify and hold the Owner and the Note Purchaser harmless from, all taxes, assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Owner, the Note Purchaser, the Lessee, or otherwise, by any federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to: any Unit or any part thereof; the purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof; the rentals, receipts or earnings arising therefrom; or this Lease, the Finance Agreement, the Security Agreement, the Purchase Order Assignment, the Assignment of Lease, any payment made pursuant to any such agreement (all such taxes, assessments, fees, charges, penalties, finds, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); excluding, however: (i) Taxes of the United States or of any state or political subdivision thereof and (if and to the extent that any person indemnified hereunder is entitled to a credit therefor against its United States Federal income taxes or is indemnified by the Lessee pursuant to Section 8 of the Finance Agreement) of any foreign country or subdivision thereof, imposed on or measured solely by the

net income or excess profits of the Owner or the Note Purchaser, provided that such Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or jurisdiction on its worldwide income without regard to the transactions contemplated by this Lease shall be excluded whether or not the indemnified party is entitled to a credit against its United States Federal income taxes; (ii) any Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by the Owner or any transfer or disposition by the Owner resulting from bankruptcy or other proceedings for the relief of creditors in which the Owner is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Lease; and (iii) Taxes which are imposed on or measured solely by the net income of the Owner or the Note Purchaser if and to the extent that such Taxes are in substitution for or reduce the Taxes payable by any other person which the Lessee has not agreed to pay or indemnify against pursuant to this Section 6; provided, however, that the Lessee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in the next succeeding paragraph. The Lessee further agrees to pay on or before the time or times prescribed by law any tax imposed on or measured solely by the net income of the Lessee (or any affiliated group, within the meaning of Section 1504 of the Internal Revenue Code of 1954, as amended, of which the Lessee is a member) under the laws of the United States or of any state or political subdivision thereof, or of any foreign country or subdivision thereof which, if unpaid, might result in a lien or other encumbrance upon any Unit; provided, however, that the Lessee shall not be required to pay any such tax during the period it may be contesting the same in the manner provided in the next succeeding paragraph.

If claim is made against the Owner or the Note Purchaser for any Taxes indemnified against under this Section 6, such party shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, the Owner or the Note Purchaser, as the case may be, shall, upon receipt of any indemnity satisfactory to it for all costs, expenses,

losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Lessee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if legally possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Lessee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Owner or the Note Purchaser; provided that no proceeding or actions relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Owner or the Note Purchaser in any such proceeding or action) without the prior written consent of the Owner or the Note Purchaser, as the case may be. If the Owner or the Note Purchaser shall obtain a refund of all or any part of such Taxes previously reimbursed by the Lessee in connection with any such contest or an amount representing interest thereon, the Owner or the Note Purchaser, as the case may be, shall pay the Lessee the amount of such refund or such interest, net of expenses; provided, however, that no Event of Default and no event which with notice or lapse of time or both would constitute an Event of Default shall have occurred and be continuing.

In case any report or return is required to be made with respect to any obligation of the Lessee under this Section 6 or arising out of this Section 6, except obligations resulting from the second sentence of the first paragraph of this Section 6, the Lessee shall either make such report or return in such manner as will show the interests of the Owner in the Units, or shall promptly notify the Owner and the Note Purchaser of such requirement and shall make such report or return in such manner as shall be satisfactory to the Owner and the Note Purchaser. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Lessee.

All the obligations of the Lessee under this Section 6 shall survive and continue, but only with respect to periods included in the term of this Lease, notwithstanding payment in full of all amounts due under the Security Agreement or the termination of this Lease. Payments due from the

Lessee to the Owner or the Note Purchaser under this Section 6 shall be made directly to the party indemnified.

For purposes of this Section 6, the term "Owner" shall include any affiliated group, within the meaning of Section 1504 of the Code, of which the Owner is a member if consolidated returns are filed for such affiliated group for Federal income tax purposes.

Section 7. Payment upon Casualty Occurrences; Insurance.  
In the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged, or permanently rendered unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 90 consecutive days, except by requisition for use by the United States Government or except by sublease pursuant to Section 12 hereof (such occurrences except such requisition for use by the United States Government and except such sublease being hereinafter called Casualty Occurrences) during the term of this Lease, or until such Unit shall have been returned in the manner provided in Section 11 or 14 hereof, the Lessee shall promptly and fully notify the Owner and the Note Purchaser with respect thereto. On the Rental Payment Date next succeeding such notice the Lessee shall pay to the Owner an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with Schedule C hereto. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Owner shall be entitled to recover possession of such Unit.

If the date upon which the making of such payment by the Lessee in respect of any Unit is required as aforesaid shall be after the term of this Lease in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term but the Lessee, in addition to paying the Casualty Value for such Unit (which shall be the same percentage of the Purchase Price as is indicated in Schedule C hereto opposite the last rental payment date), shall pay interest thereon from the end of such term to the date of such payment at the prime rate of interest which Morgan Guaranty Trust Company of New York, New York charges on the date of such payment for 90-day unsecured loans to large corporate borrowers of the highest credit standing.

The Owner hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof before and after the expiration of this Lease, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Owner, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit plus reasonable expenses properly incurred by the Lessee in disposing of such Unit and shall pay any excess to the Owner.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be the percentage of the Purchase Price of such Unit set forth in Schedule C hereto opposite the number which corresponds to such date.

In the event of the requisition for use by the United States Government of any Unit during the term of this Lease or any renewal thereof, all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease or any renewal thereof, the Lessee shall be obligated to return such Unit to the Owner pursuant to Section 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease or any renewal thereof, but Lessee shall in all other respects comply with the provisions of said Section 11 or 14, as the case may be, with respect to such Unit. All payments received by the Owner or the Lessee from the Government for the use of such Unit during the term of this Lease or any renewal thereof shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Owner or the Lessee from the Government for the use of such Unit after the term of this Lease or any renewal thereof, shall be paid over to, or retained by, the Owner.

Except as hereinabove in this Section 7 provided, the Lessee shall not be released from its obligations hereunder

in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder to and until the term of this Lease shall have expired pursuant to Section 4, or has been earlier terminated.

The Lessee shall at all times while this Lease is in effect maintain or cause to be maintained with such insurers as may be acceptable to the Owner and any assignee hereof, property and public liability insurance in respect of the Units at the time subject hereto against all risks of liability in excess of \$2,000,000 for damage to the property of, or for personal injury suffered by, third persons and insured against by the Lessee on similar equipment (except in each case as otherwise agreed to by the Owner). The Lessee shall have the right to self-insure with respect to the Units against all risk of property damage, casualty and public liability up to \$2,000,000. The Owner recognizes that such self-insurance is customary for the Lessee and is contemplated herein. In the event that the Lessee abandons or significantly alters its policy of self-insurance or decides to insure similar equipment owned by it, then the Lessee shall at all times while this Lease is in effect maintain or cause to be maintained with such insurers as may be acceptable to the Owner and any assignee hereof, property, casualty and public liability insurance in respect of the Units at the time subject hereto in amounts and against risks insured against by the Lessee on such similar equipment (except in each case as otherwise agreed to by the Owner).

All insurance policies maintained pursuant to this Lease shall: (i) name the Owner as owner of the Equipment, the Note Purchaser and any assignee thereof as additional insureds with respect to the Equipment and shall insure the Owner's, the Note Purchaser's and such assignee's interests, regardless of any breach or violation by the Lessee of any warranties, declarations, or conditions contained in such policies; (ii) provide that all insurance proceeds with respect to the Equipment shall be adjusted by the Lessee so long as no Event of Default shall have occurred and be continuing; (iii) provide that any losses with respect to the Equipment shall be payable notwithstanding any act, failure to act or negligence of any named insured or any other person; (iv) provide that any losses shall be payable notwithstanding the use of the Equipment for purposes more hazardous than permitted by the terms of the policy; (v)

provide that any losses shall be payable notwithstanding any foreclosure or other proceeding or notice of sale relating to the Equipment or this Lease or the Security Agreement; (vi) provide that any losses shall be payable notwithstanding any change in the title or ownership of the Equipment; and (vii) provide that no cancelation thereof shall be effective until at least 30 days after the giving of notice by the insurer thereunder to the Owner, the Note Purchaser, any assignee thereof and the Lessee; and (viii) so long as any portion of the Notes shall remain unpaid, in the case of any casualty insurance policies, provide that losses, if any, in respect thereof shall be payable to the Note Purchaser under a standard mortgage loss payable clause satisfactory to the Note Purchaser. Any insurance maintained by Lessee pursuant to this Section 7 may be evidenced by blanket insurance policies covering the Equipment and other property or assets of the Lessee.

Upon the execution of this Lease, and thereafter not less than 15 days prior to the expiration dates of the expiring policies theretofore delivered pursuant to this Section 7, the Lessee shall deliver to the Owner duplicate originals of all policies (or in the case of blanket policies, certificates thereof issued by the insurers thereunder) for the insurance maintained pursuant to this Section 7; provided, however, that if the delivery of a formal policy or certificate, as the case may be, is delayed, the Lessee shall deliver an executed binder with respect thereto and shall deliver the formal policy or certificate, as the case may be, upon receipt thereof.

There shall be no apportionment of premiums in respect of insurance maintained pursuant to this Section 7 at the expiration or any termination of this Lease; and the Lessee may cancel any such policies as of such expiration or termination and obtain any premium refunds incident thereto. Provided that no Event of Default shall have occurred and be continuing, the Lessee shall be entitled to any premium refund or dividend received by the Owner or the Lessee on account of any insurance maintained by the Lessee pursuant to this Section 7.

In the event that the Lessee shall fail to maintain insurance as herein provided, the Owner may at its option provide

such insurance unless, after telegraphic notice from the Owner to the Lessee of such failure upon discovery thereof by the Owner, the Lessee gives immediate telephonic or telegraphic assurances that such failure will be cured and such assurances are satisfactory to the Owner in the exercise of its reasonable discretion. In the event the Owner provides insurance pursuant to this paragraph, the Lessee shall, upon demand from time to time, reimburse the Owner for the cost thereof together with interest, on the amount of the cost to the Owner of such insurance which the Lessee shall have failed to maintain, at the rate per annum specified in Section 17 hereof.

Any insurance proceeds received by the Owner or the Note Purchaser as the result of insurance carried by the Lessee, or condemnation payments received by the Owner or the Note Purchaser in respect of Units suffering a Casualty Occurrence, shall be deducted from the amounts payable by the Lessee to the Owner in respect of Casualty Occurrences pursuant to this Section 7, and, in the case of such insurance proceeds, and provided no Event of Default then exists hereunder, any amount received by the Owner or the Note Purchaser which exceeds the Casualty Value in respect of such Casualty Occurrences shall be paid to the Lessee. If the Owner or the Note Purchaser shall receive any such insurance proceeds or condemnation payments with respect to any Units after the Lessee shall have made payments with respect to such Units pursuant to this Section 7 without deduction for such insurance proceeds or such condemnation payments, the Owner or the Note Purchaser, as the case may be, shall, provided no Event of Default then exists hereunder, pay to the Lessee all such insurance proceeds and condemnation payments. All insurance proceeds or condemnation payments received by the Owner or the Note Purchaser in respect of any Unit not suffering a Casualty Occurrence shall, provided no Event of Default then exists hereunder, be paid to the Lessee upon proof satisfactory to the Owner or the Note Purchaser, as the case may be, that any damage to such Unit in respect of which such proceeds were paid has been fully repaired or that such proceeds will be promptly employed by the Lessee to fully repair such damage.

Section 8. Reports. On or before April 1 in each year, commencing with the calendar year 1977, the Lessee will furnish to the Owner and the Note Purchaser an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Agreement, the amount, description and numbers of all Units that have suffered a Casualty Occurrence or to the knowledge of the Lessee are then undergoing repairs (other than running repairs) or are then withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Owner or the Note Purchaser may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by Section 5 hereof and the Security Document have been preserved or replaced. The Owner and the Note Purchaser shall have the right by their agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as either may request during the continuance of this Lease.

Section 9. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification. NEITHER THE OWNER NOR THE NOTE PURCHASER MAKES, HAS MADE OR SHALL BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND NEITHER THE OWNER NOR THE NOTE PURCHASER MAKES ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE NOR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT (EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE), IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE OWNER, THE NOTE PURCHASER AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE; but the Owner hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Owner and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Owner may have against the Builder. The Owner and the Note Purchaser shall have no responsibility

or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstance in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance or repair of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as among the Lessee, the Note Purchaser and the Owner that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Owner or the Note Purchaser based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Owner and the Note Purchaser, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Unit, the Lessee will fully conform therewith at its own expense; provided, however, that the Lessee shall not furnish any part of the cost of any alteration, replacement or addition of or to any part on any Unit except for alterations, replacements or additions that are owned by the Lessee and are readily removable without causing material damage to the Units and except for alterations or replacements which constitute ordinary maintenance and repairs made by the Lessee pursuant to the third paragraph of this Section 9; provided further, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Owner or the Note Purchaser, adversely affect the property or rights of the Owner or the Note Purchaser under this Lease or under the Security Agreement. Nothing herein shall be deemed to require the Owner to make, or pay the cost of, any repair, alteration, replacement or addition to any Unit or any part thereof.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good order and proper repair.

Any and all additions to any Unit and any and all parts installed on or replacements made to any Unit (not including, however, any parts installed on and additions and replacements made to any Unit any part of whose cost is furnished by the Lessee and which are readily removable without causing material damage to such Unit, but including parts installed on and replacements made to any Unit which constitute ordinary maintenance and repairs made by the Lessee pursuant to the preceding paragraph) shall be considered accessions to such Unit and, without cost or expense to the Owner or the Note Purchaser, there shall immediately be vested in the Owner and the Note Purchaser the same interests in such accessions as the interests of the Owner and the Note Purchaser in such Unit. In addition to the obligation of the Lessee to furnish any parts or replacements constituting ordinary maintenance and repairs made by the Lessee to any Unit pursuant to the preceding paragraph, the Lessee may furnish the cost, or any part thereof, of any additions, parts or replacements to any Unit, but only so long as they are owned by the Lessee and are readily removable without causing material damage to any such Unit. The Lessee shall not permit any addition, part or replacement to be attached or affixed to any Unit if any part of the cost thereof is furnished by any sublessee or other user of such Unit unless such sublessee or other user owns such addition, part or replacement and it is readily removable without causing material damage to such Unit. The Lessee will have the right at any time to remove at its own expense any additions to any Unit and any and all parts installed on or replacements made to any Unit which are owned by the Lessee, provided that the Lessee immediately after such removal repairs, or causes the repair of any damage to any such Unit caused by such removal.

The Lessee shall pay, and shall protect, indemnify and hold the Owner, the Note Purchaser and any assignee thereof, and their respective successors, assigns, agents and servants (hereinafter called Indemnified Persons), harmless

from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever (hereinafter called "claims") which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising, or alleged to arise out of this Lease or the Units, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof, (ii) any latent and other defects whether or not discoverable by the Owner or the Lessee, (iii) any claim for patent, trademark or copyright infringement, (iv) any claims based on strict liability in tort, (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Owner, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof, (vi) any violation, or alleged violation, of any provision of this Lease (except by the Owner) or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof, or (vii) any claim arising out of any of the Owner's obligations under the Assignment of Lease, the Security Agreement or the Finance Agreement, except to the extent such claim arises from an act or omission of the Owner; provided, however, that such claim shall not include the liability of the Owner to pay the principal and interest on the Notes (as referred to in the Finance Agreement and as defined in the Security Agreement). The Lessee shall be obligated under this Section 9, irrespective of whether any Indemnified Person shall also enjoy rights of indemnification with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this Section 9 without first resorting to any such other rights of indemnification provided, however, that with respect to any matter against which such Indemnified

Person has received indemnification payments from any person other than the Lessee, the Lessee shall be obligated under this Section 9 to indemnify such Indemnified Person only to the extent, if any, that such indemnification payments do not fully indemnify such Indemnified Person against such matter. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person, as the case may be, and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this Section 9, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person, as the case may be, in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Owner each agrees to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this Section 9 by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, it shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given, including any right of such Indemnified Person to indemnification from any person other than the Lessee. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this Section 9 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made.

The Lessee further agrees to indemnify, protect and hold harmless the Indemnified Persons, and the Builder as third party beneficiary hereof from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Indemnified Persons because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to the Builder of any claim known to the Lessee from which liability may be charged against the Builder hereunder.

The indemnities contained in this Section 9 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by any Indemnified Person. None of the indemnities in this Section 9 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

The term Indemnified Persons shall also include any corporation which directly or indirectly, controls or is controlled by, or is under common control with, the Owner.

The Lessee agrees to assist and cooperate with the Owner within a reasonable time prior to the required date of filing in the preparation and filing of any and all reports (other than income tax returns) required to be filed by the Owner with any federal, state or other regulatory authority by reason of the ownership by the Owner of, or any interest of the Note Purchaser with respect to, the Units or the leasing thereof to the Lessee.

Section 10. Default. If, during the continuance of this Lease, one or more of the following events (each such event being hereinafter sometimes called an Event of Default) shall occur:

A. payment of any part of the rental provided in Section 3 hereof or payment in respect of any

Casualty Occurrence pursuant to Section 7 hereof or of any voluntary termination pursuant to Section 19 hereof shall not be made by the Lessee when due, and such failure shall continue for five business days after written notice thereof to the Lessee from the Owner or the Noteholder provided however that Lessee shall not be entitled to any such notice with respect to any such failure to make payment occurring after two such notices have been given with respect to two failures occurring in any two year period; or

B. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Security Agreement, the Finance Agreement or the Consent, and such default shall continue for 30 days after written notice from the Owner or the Note Purchaser to the Lessee specifying the default and demanding that the same be remedied; provided, however, that if the Lessee diligently undertakes to remedy such default as soon as practicable after the aforementioned written notice, then no Event of Default shall occur after such 30 days so long as such diligent undertaking continues during a period no longer than 90 days after such written notice; or

C. the entry of a decree or order by a court having jurisdiction in the premises adjudging the Lessee bankrupt or insolvent, or the filing of a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Lessee under the Federal Bankruptcy Act or any other applicable Federal or state law, (unless such petition is stayed or discharged within a period of 90 days) or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Lessee or of any substantial part of its property, or ordering the winding up or liquidation of its affairs; or

D. the institution by the Lessee of proceedings to be adjudicated bankrupt or

insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under the Federal Bankruptcy Act or any other applicable Federal or state law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Lessee or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Lessee in furtherance of any such action; or

E. an Event of Default set forth in Article III of the Security Agreement arising out of any default by the Lessee shall have occurred and be continuing;

then, in any such case, the Owner, at its option, may,

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Owner may by its agents enter upon the premises of the Lessee or other premises, in so far as the Lessee may be lawfully authorized to so permit, where any of the Units may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of such Units

and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Owner shall, nevertheless, have a right to recover forthwith from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Owner reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 6.6% per annum discount, compounded quarterly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, and (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Owner or the Note Purchaser shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental.

The remedies in this Lease provided in favor of the Owner shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any

requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by itself or on its behalf.

The failure of the Owner to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

The Lessee also agrees to furnish the Owner and the Note Purchaser, promptly upon any responsible officer's becoming aware of any condition which constitutes an Event of Default hereunder or which, after notice or lapse of time or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who in the normal performance of his operational responsibilities would have knowledge of such matter and the requirements of this Lease with respect thereto.

Section 11. Return of Units Upon Default. If the Owner or the Note Purchaser shall be entitled to possession of the Units pursuant to the provisions of this Lease or the Security Agreement, the Lessee shall forthwith deliver possession of the Units to the Owner and shall give prompt telegraphic and written notice to the Association of American Railroads and all railroads having possession of any Unit so to return such Units. Each Unit returned to the Owner pursuant to this Section 11 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear and modifications, if any, permitted by this Lease excepted, (ii) have attached or affixed thereto any property considered an accession thereto as provided in Section 9 hereof and have removed therefrom any property not so considered an accession thereto and

(iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable. For the purpose of delivering possession of any Unit or Units to the Owner as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner cause such Units to be transported to such location as shall reasonably be designated by the Owner, provided that such location shall in any event be in the United States, including the District of Columbia but excluding Alaska, Hawaii and all United States territories and possessions, and there assembled,

(b) furnish and arrange for the Owner to store such Units at such location as is designated by the Owner in the immediately preceding subparagraph (a) on any lines of the Lessee or of a nationally recognized and reputable storer of railroad equipment approved by the Owner, stored in accordance with railroad industry standards for like or similar equipment, until such Units have been sold, leased or otherwise disposed of by the Owner, but not to exceed 180 days, and

(c) cause the Units to be moved to such interchange point or points in the United States, including the District of Columbia but excluding Alaska, Hawaii and all United States territories and possessions, as shall be designated by the Owner upon any sale, lease or other disposal of all or any of the Units.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Owner shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the

Owner or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 11, the Lessee hereby irrevocably appoints the Owner as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Owner, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

Section 12. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Owner without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Owner other than the Note Purchaser and its assignees except upon written notice of such assignment from the Owner; provided, however, that no such assignment shall violate any applicable laws, including, without limitation, the Securities Act of 1933, any successor statute thereto as may be hereafter enacted or any applicable Blue Sky or state securities laws. All the rights of the Owner hereunder (including, but not limited to, the rights under Sections 6, 7 and 10 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Owner, the Note Purchaser and their respective assignees.

So long as no Event of Default exists hereunder and the Lessee shall have fully complied with the provisions of this Section 12, the Lessee shall be entitled to the possession of the Units and also to sublease the Units to, or to permit their use by, a sublessee or user operating in the United States of America (or any State thereof or the District of Columbia), upon lines of railroad owned or operated by a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia), or over which such railroad company or companies have trackage rights or rights for operation of their trains, and upon connecting and other carriers in the usual interchange of traffic in the continental United States, Canada and Mexico, but only upon and subject to all the terms and conditions of this Lease; provided, however, that if the Lessee subleases

or permits the use of any Unit in Canada (or any Province or Territory thereof) or in Mexico (or any State or the Federal District thereof), the Lessee shall first have (a) taken all necessary action to protect the right, title and interest of the Owner and the Note Purchaser in the Units to be so subleased or used and (b) furnished the Owner and the Note Purchaser with an opinion of Canadian or Mexican counsel, as the case may be, satisfactory to the Owner and the Note Purchaser to the effect that such action is all that is necessary to protect the right, title and interest of the Owner and the Note Purchaser in such Units; provided further, that no Units shall be used predominantly outside the United States of America within the meaning of section 48(a) of the Internal Revenue Code of 1954, as amended to the date hereof, nor shall the Lessee sublease the Units to, or permit their use by, any person in whose hands such Units would not qualify as "section 38" property within the meaning of such Code; and provided further, than no sublease of the Units or the use of the Units under the terms of a car contract for a term exceeding two hundred seventy days shall be permitted, without the prior written approval of the Owner, which shall not be unreasonably withheld, unless the sublessee or the user is a wholly-owned subsidiary or an affiliate (as defined in Section 19) of the Lessee.

Any such sublease or car contract shall be under and subject to the terms hereof, and shall not relieve the Lessee of its obligations hereunder. The Lessee shall remain primarily liable hereunder.

The Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge, security interest or other encumbrance (except any sublease or car contract as aforesaid and other than an encumbrance resulting from claims against the Owner or the Note Purchaser not related to the ownership or leasing of, or the security interest of the Note Purchaser to, the Units) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interest of the Owner, the Note Purchaser or the Lessee therein. The Lessee shall not, without the prior written consent of the Owner, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of this Section 12.

Nothing in this Section 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have specifically assumed the obligations of the Lessee hereunder and under the Consent by an appropriate instrument in writing) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety or which is a wholly-owned subsidiary of the Lessee, provided that such assignee or transferee will not, upon the assignment or transfer to it of the leasehold interest of the Lessee under this Lease, be in default under any provision of this Lease and provided further, that if the assignee or transferee is a wholly-owned subsidiary of the Lessee, then the Lessee shall guarantee the performance by such assignee or transferee of its obligations under this Lease.

Section 13. Renewal and Other Options. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may, by written notice delivered to the Owner not less than 120 days prior to the end of the original term of this Lease, elect to extend the term of this Lease in respect of not less than twenty of the Units then covered by this Lease, for a period not less than one nor more than ten years commencing on the scheduled expiration of the original term of this Lease, at a "Fair Market Rental" payable in quarterly payments on the quarterly anniversaries of the expiration of the original term.

In the event the Lessee does not elect to extend the original term of this Lease prior to the time provided for such election in this Section 13, the Owner hereby agrees that if it should thereafter determine to sell any Units which are subject to this Lease at the end of such term, which sale it does not now contemplate, it will promptly give the Lessee written notice of such determination; provided, however, that the Owner will in no event be obligated hereby to give such notice less than 90 days before the end of such term. The Lessee shall thereupon have the option, during a

period of 60 days following the giving of such notice by the Owner, to elect to purchase such Units for cash at their "Fair Market Value". The Lessee may exercise this option by giving written notice to the Owner, within 60 days after notice was given by the Owner, that the Lessee elects to purchase such Units. Upon the giving by the Lessee of such notice of election to purchase, the Lessee will be obligated to purchase from the Owner, and the Owner will be obligated to sell to the Lessee, such Units at their "Fair Market Value" on a date of purchase to be agreed upon by the Owner and the Lessee, but such date of purchase will in no event be later than 10 days after determination of "Fair Market Value" as provided hereinafter in this Section 13, the purchase price to be payable on the date of purchase at such place as the Owner shall reasonably specify in writing and in the manner provided for rental payments pursuant to Section 3 hereof. This Lease (including the obligation to pay rent) shall be extended until such date of purchase.

"Fair Market Rental" shall be determined on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental. If, after 60 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Owner and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such rental shall be determined in accordance with the foregoing definition by the procedure set forth in the second succeeding paragraph.

"Fair Market Value" shall be determined on the basis of, and shall be equal in amount to, the price which would obtain in an arm's-length transaction between an informed and willing buyer and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such price. If, after 30 days from the giving of notice by the Lessee of the Lessee's election to purchase as provided in this Section 13, the Owner and the

Lessee are unable to agree upon a determination of the Fair Market Value of the Units to be purchased, such value shall be determined in accordance with the foregoing definition by the procedure set forth in the next succeeding paragraph.

If either party to determination of Fair Rental Value or Fair Market Value, as the case may be, shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, each party shall appoint an independent appraiser within 25 business days after such notice is given, and the two appraisers so appointed shall within 35 business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 business days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term or the Fair Market Value of the Units to be purchased, as the case may be, as soon as practicable and in any event not later than 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental or Fair Market Value, as the case may be, of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental or Fair Market Value and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures.

The expenses of the appraisal procedures shall be borne by the Lessee.

Section 14. Return of Units upon Expiration of Term.

As soon as practicable on or after the termination of the original or any extended term of this Lease, and in any event not later than 90 days thereafter, the Lessee will, at its own cost and expense, at the request of the Owner, cause each Unit to be transported to such point or points as shall be reasonably designated by the Owner immediately prior to such termination, provided that such point or points shall in any event be in the United States, including the District of Columbia but excluding Alaska, Hawaii and all United States territories and possessions, and arrange for the Owner to store such Unit on any lines of the Lessee or of a nationally recognized and reputable storer or railroad equipment approved by the Owner, stored in accordance with railroad industry standards for like or similar equipment for a period not exceeding 90 days from the date such Unit is first placed in storage pursuant to this Section 14; the assembly, delivery, storage and transporting of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Owner or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable except in the case of negligence or intentional act of the Lessee or of its employees or agents and, except to the extent otherwise provided by law, for any injury to or the death of any person exercising, either on behalf of the Owner or any prospective purchaser, the rights of inspection granted under this sentence. The assembly, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Owner shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to cause the assembly, delivery, storage and transporting of the Units. Each Unit returned to the Owner pursuant to this Section 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted,

(ii) have attached or affixed thereto any property considered an accession thereto as provided in Section 9 hereof and have removed therefrom any special device, rack or assembly not so considered an accession thereto and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable.

Section 15. Recording. The Lessee, at its own expense, will cause this Lease, the Security Agreement and the Assignment of Lease to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Owner under the Security Agreement and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, re-register, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Owner or the Note Purchaser for the purpose of proper protection, to their satisfaction, of the Note Purchaser's and the Owner's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Agreement or the Assignment of Lease. If the Owner transfers its interest as lessor hereunder (other than under the Assignment of Lease), the Owner shall, at its sole cost and expense, cause any and all required instruments to be filed and recorded in accordance with the provisions of the Interstate Commerce Act, and any other applicable law or regulations.

The Lessee will promptly furnish to the Note Purchaser and the Owner evidence of all such filing, registering, depositing or recording, undertaken pursuant to this Section 15, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Note Purchaser and the Owner. This Lease, the Security Agreement, the Assignment of Lease, the Consent and the Purchase Order Assignment shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

Section 16. Owner's Right to Perform for the Lessee.  
If the Lessee fails to perform or comply with any of its agreements contained herein, the Owner may (but shall not be obligated to) itself perform or comply with any such agreement, unless, after telegraphic notice from the Owner to the Lessee of such failure upon discovery thereof by the Owner, the Lessee gives immediate telephonic or telegraphic assurances that such failure will be cured and such assurances are satisfactory to the Owner in the exercise of its reasonable discretion. If the Owner performs or complies with any such agreement, the amount of the reasonable cost and expenses of the Owner incurred in connection with such performance or compliance, together with interest on such amount at 10% per annum, shall be payable by the Lessee upon demand.

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Section 17. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any non-payment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to interest at a rate on the overdue rentals and other obligations for the period of time during which they are overdue equal to 10% per annum, or such lesser amount as may be legally enforceable.

Section 18. Mileage Allowance. It is contemplated that the Lessee shall receive insofar as applicable law and regulations allow, all mileage allowance rentals and/or other compensation (hereinafter referred to as "Mileage") payable by carriers by reason of the use of the Units and if for any reason the Owner shall receive any Mileage then (unless an Event of Default as defined in Section 10 shall have occurred and be continuing in which event such Mileage or portion thereof shall be retained by Owner until such Event of Default shall no longer be continuing) the Owner shall remit such Mileage to the Lessee promptly after the Lessee shall furnish to the Owner, at the Lessee's sole expense, either (i) evidence satisfactory to the Owner acting reasonably or (ii) a ruling of the Interstate Commerce Commission to the effect that the remittance thereof to the Lessee will not constitute a rebate within the meaning of 49 U.S.C. Section 41, as amended, or (iii) an opinion of counsel to the same effect.

Section 19. Voluntary Termination. Unless an Event of Default or other event which, with notice, demand and/or lapse of time, would constitute an Event of Default shall have occurred and be continuing hereunder, the Lessee shall be entitled, at its option, upon at least 60 days' prior written notice to the Owner and the Note Purchaser, to terminate this Lease with respect to not less than fifty Units, if the Lessee shall have made a good faith determination that such Units have become obsolete or otherwise uneconomical for use in the Lessee's operations, which notice shall be signed by the Chairman of the Board of Directors or the President of Lessee and shall state that such Units have become obsolete or otherwise uneconomical for use in the Lessee's operations; provided, however, that such termination

as to such Units shall become effective only on a Rental Payment Date specified in Section 3 hereof (hereinafter in this Section 19 called the Termination Date) and, in no event, prior to seven years after the last Closing Date under the Finance Agreement; and provided further, that such termination shall not take effect unless the Lessee shall have fully complied with the succeeding paragraphs of this Section 19.

During the period from the giving of such notice to the Termination Date, the Lessee, as agent for the Owner, shall use its best efforts to obtain bids for the purchase of all the Units as to which the Lease is being terminated on an "as is, where is" basis, and the Lessee shall certify to the Owner in writing the amount of each bid received and the name and address of the person (who shall not be the Lessee or any person, firm or corporation affiliated with the Lessee) submitting such bid. For purposes of this Lease, an "affiliate" of the Lessee shall mean any person who possesses, directly or indirectly, the right to vote at least 20% of the voting securities of the Lessee, and any person who, directly or indirectly, controls or is controlled by or is under common control with the Lessee, and "control" (including "controlled by" and "under common control with"), as used with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or control the direction of the management and policies of such person, whether through the ownership of voting securities, by contract or otherwise. On the Termination Date, the Owner shall, without recourse or warranty, sell the Units for cash to whomsoever shall have submitted the highest bid therefor prior to the Termination Date, and thereupon the Lessee shall cause the Units to be delivered to the Owner in accordance with the terms of Section 14 hereof. If the sale of the Units shall not occur on the Termination Date, the Lessee shall not cause such delivery of the Units to the Owner; and this Lease shall continue in full force and effect. The Owner shall be under no duty to (but may) solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action in connection with any such sale other than as expressly provided in this Section 19.

The total sale price realized at any such sale of such Units shall be retained by the Owner and, in addition,

the Lessee shall pay to the Owner on the Termination Date the excess, if any, of (i) the aggregate Termination Value of the total number of Units as to which the Lease is being terminated which shall be the percentage of the aggregate Purchase Price of such Units set forth in Schedule C opposite the number which corresponds to the Termination Date, over (ii) the proceeds of such sale less all expenses incurred by the Owner in connection with such sale or with the collection or distribution of such payment. The Lessee shall also be obligated to pay the Owner on the Termination Date any and all rentals and other sums due hereunder with respect to the Units accrued up to and including the Termination Date. In the event of such sale and compliance by the Lessee with all the provisions of this Section 19, the obligation of the Lessee to pay rental hereunder on all rental payment dates commencing after the Termination Date shall terminate.

Notwithstanding the provisions of this Section 19, the Lessee may (if it has made the determination referred to in the first paragraph of this Section 19) solicit bids for the assignment of this Lease, and all of Lessee's obligations hereunder, with respect to all of the Units as to which the Lease would be terminated. If the Lessee shall obtain any such bids, it shall give written notice thereof to the Owner and the Note Purchaser, which notice shall be accompanied by an agreement of such proposed assignee to undertake and assume all of the obligations of the Lessee under this Lease with respect to such Units. Within 30 days after receipt of such notice from Lessee, the Owner and the Note Purchaser shall notify the Lessee whether they will approve of such proposed assignee as the assignee of Lessee's obligation with respect to such Units, it being understood and agreed that either the Owner or the Note Purchaser shall have the right, in their sole discretion, to arbitrarily withhold such approval, and it being further understood and agreed that the failure to so approve such proposed assignee within such 30 day period shall be deemed to be the withholding of such approval. If (i) the Owner and the Note Purchaser so approve of such proposed assignee, (ii) such proposed assignee enters into an agreement of assignment and assumption (or a new lease substantially in the form of this Lease, with appropriate changes and variations) in form and

substance satisfactory to the Owner and the Note Purchaser and their respective counsel, (iii) all filings and other proceedings have taken place, in form and substance satisfactory to the Owner and the Note Purchaser and their respective counsel, to accomplish such assignment and assumption, and to maintain the lien and security of the Note Purchaser in and to such Units and such Lease as assigned and assumed (or such new lease), (iv) all costs and expenses of such transaction by and on behalf of the Owner and the Note Purchaser, including, without limitation, reasonable counsel fees and expenses, shall have been paid by the Lessee, and (v) the Lessee shall not be in default hereunder, this Lease shall terminate as to such Units on and as of the next following Rental Payment Date upon the payment of the Rental Payment due on such date to be paid with respect to such Units, except for any liabilities of Lessee, actual or contingent, accruing on or prior to such date of termination.

Section 20. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when delivered to such other party or deposited in the United States mails, first-class postage prepaid, addressed as follows:

if to the Note Purchaser, at 1212 Market Street, Philadelphia, Pennsylvania, 19107, Attn: Securities Investment Department;

if to the Owner at P. O. Box 2332, Boston, Massachusetts, 02107;

if to the Lessee, at 910 Market Street, Wilmington, Delaware 19899, attention of Director of Traffic Department;

or addressed to any party at such other address as such party shall hereafter furnish to the other parties in writing. Any certificate, document or report required to be furnished by any party hereto to the other parties shall be delivered to the address set forth above for such party.

Section 21. No Recourse. No recourse shall be had in respect of any obligation due under this Lease, or

referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the Owner or the Lessee, or against the Owner, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of incorporators, stockholders, directors, officers, as such, or beneficiaries being forever released as a condition of and as consideration for the execution of this Lease.

Section 22. Severability; Effect and Modification of Lease; Third Party Beneficiaries. Any provision of this Lease which is prohibited or enforceable in any jurisdiction, shall be, as to such jurisdiction, in effective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Owner and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto, except the Finance Agreement. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Owner and the Lessee.

Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the Owner, the Note Purchaser, an Indemnified Person as defined in Section 9, and their permitted successors and assigns) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party except as aforesaid.

Section 23. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Note Purchaser shall be deemed to be the

original counterpart. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

Section 24. Section Headings and Table of Contents. All Section headings and the Table of Contents are inserted for convenience only and shall not affect any construction or interpretation of this Lease.

Section 25. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Pennsylvania; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

HERCULES INCORPORATED

By

W.C. Brown  
President

[Corporate Seal]

Attest:

AB Englehardt

NEW ENGLAND MERCHANTS LEASING  
CORPORATION B-3

By

Paul D. Dean, III  
Paul D. Dean, III  
Vice President

[Corporate Seal]

Attest:

Leo D. Chausse  
-Secretary  
ASS. STANT CLERK

SCHEDULE A

to Lease

EQUIPMENT DESCRIPTION

Type

100 ton, 5,250 cubic foot capacity Covered Hopper Rail Cars  
A.A.R. Car Type -- L 254

A.A.R. Mechanical Designation

LO

Quantity

200

Lessee's Identifying Numbers

HPCX 59000-59199 (both inclusive)

SCHEDULE B  
to Lease

CASUALTY VALUES

Quarterly Anniversary Dates of the Last Closing Date	Percentage	Quarterly Anniversary Dates of the Last Closing Date	Percentage
Last Closing Date....	106.00%		
1.....	107.85%	41.....	84.71%
2.....	108.15%	42.....	83.49%
3.....	108.30%	43.....	82.25%
4.....	108.45%	44.....	80.98%
5.....	108.59%	45.....	79.70%
6.....	108.66%	46.....	78.40%
7.....	108.69%	47.....	77.02%
8.....	108.66%	48.....	75.71%
9.....	108.60%	49.....	74.35%
10.....	108.49%	50.....	72.95%
11.....	108.38%	51.....	71.55%
12.....	108.19%	52.....	70.13%
13.....	107.91%	53.....	68.70%
14.....	107.60%	54.....	67.25%
15.....	107.23%	55.....	65.79%
16.....	106.80%	56.....	64.31%
17.....	106.33%	57.....	62.71%
18.....	105.82%	58.....	61.30%
19.....	105.27%	59.....	59.78%
20.....	104.67%	60.....	58.24%
21.....	104.03%	61.....	56.68%
22.....	103.34%	62.....	55.11%
23.....	102.62%	63.....	53.50%
24.....	101.74%	64.....	51.90%
25.....	101.03%	65.....	50.27%
26.....	100.21%	66.....	48.62%
27.....	99.33%	67.....	46.95%
28.....	98.44%	68.....	45.28%
29.....	97.53%	69.....	43.58%
30.....	96.60%	70.....	41.86%
31.....	95.63%	71.....	40.12%
32.....	94.65%	72.....	38.37%
33.....	93.63%	73.....	36.59%
34.....	92.60%	74.....	34.80%
35.....	91.54%	75.....	32.97%
36.....	90.46%	76.....	31.13%
37.....	89.36%	77.....	29.28%
38.....	88.24%	78.....	27.40%
39.....	87.10%	79.....	23.60%
40.....	85.90%	80.....	20.00%

SCHEDULE C  
to Lease

TERMINATION VALUES

Quarterly Anniversary Dates of the Last Closing Date	<u>Percentage of Purchase Price</u>	Quarterly Anniversary Dates of the Last Closing Date	<u>Percentage of Purchase Price</u>
Twenty-eighth Anniversary of the Last Closing Date.....	90.95%		
29.....	89.97	55.....	56.20%
30.....	88.96	56.....	54.65%
31.....	87.94	57.....	53.09%
32.....	86.87	58.....	51.51%
33.....	85.80	59.....	49.91%
34.....	84.69	60.....	48.30%
35.....	83.56	61.....	46.51%
36.....	82.41	62.....	44.92%
37.....	81.13	63.....	43.25%
38.....	80.01	64.....	41.68%
39.....	78.71	65.....	39.87%
40.....	77.47	66.....	38.15%
41.....	76.20	67.....	36.41%
42.....	74.91	68.....	34.66%
43.....	73.59	69.....	32.87%
44.....	72.26	70.....	31.08%
45.....	70.91	71.....	29.27%
46.....	69.52	72.....	27.43%
47.....	68.12	73.....	24.50%
48.....	66.71	74.....	23.60%
49.....	65.16	75.....	21.70%
50.....	63.70	76.....	19.77%
51.....	62.24	77.....	17.83%
52.....	60.75	78.....	15.87%
53.....	59.25	79.....	13.92%
54.....	57.73	80.....	-----

STATE OF DELAWARE :  
: SS.  
COUNTY OF NEW CASTLE:

On this 14th day of September 1976, before me personally appeared Therese C. Brown, to me personally known, who, being by me duly sworn, says that he is President of HERCULES INCORPORATED, that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

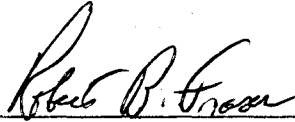
Regina C. Bludze  
Notary Public

[Notarial Seal]

My Commission expires  
2-16-80

STATE OF MASSACHUSETTS :  
: SS.  
COUNTY OF SUFFOLK :

On this 15<sup>th</sup> day of September, 1976, before me personally appeared Paul D. Dean, III, to me personally known, who being by me duly sworn, says that he is a Vice President of NEW ENGLAND MERCHANTS LEASING CORPORATION B-3, that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires 11/26/76